Bail Slip

The Appellant/Accused namely Sathya was directed to be release on bail as per order of this Court dated 27.11.2006 in Crl.M.P.No.4495/06 in CA NO.335/06.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-08-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.335 of 2006

Sathya ..Appellant

-vs-

State rep. by its
Inspector of Police
Sathuvachari Police Station
Vellore District. .. Respondent

This appeal is filed under section 374 of CR PC against the Judgment made in S.C.No.425/2005 dated 08.02.2006 on the file of the Additional Assistant Sessions Judge-cum- District Judge(Trainee), Vellore.

For appellant : Mr.R.John Sathyan

For respondent : Mr.V.R.Balasubramaniam,
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred by the accused in S.C.No.425 of 2005 on the file of the Additional Assistant Sessions Judge-cum-District Judge(Trainee), Vellore. The accused was charged under Sections 363, 366 and 376(1) of IPC who was convicted only under Section 376(1) of IPC to undergo seven years rigorous imprisonment and a fine of Rs.1000/- with default sentence is the appellant herein.

2. The learned Judicial Magistrate No.V,Vellore the committal Magistrate, has furnished copies under Section 207 of Cr.P.C. to the

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accused on appearance on summons under Section 209 of Cr.P.C. committed the case to the Court of Sessions, since the case is exclusively triable by a Court of Sessions. The learned trial Judge has framed charges under Sections 363, 366 and 376(1) of IPC and when questioned the accused pleaded not guilty.

3. Before the trial Court P.Ws 1 to 13 were examined and Exs P1 to P17 were exhibited and M.O.1 to M.O.7 were marked.

4.P.W.1 is the father of the victim girl"A" who was aged 13 at the time of the occurrence and was studying in VIII Standard in Holy Cross School. According to P.W.1, his daughter left the house on 9.3.2005 morning at 6.00 a.m., for tuition. But she did not return even after 8.00 a.m., on 9.3.2005. The enquiry at the tuition teacher revealed that the victim girl did not come for tuition on 9.3.2005. Immediately, he preferred a complaint under Ex P1 with Sathuvachari police Station. ExP2 is the birth certificate of the victim girl. On 16.3.2005 at about 9.00 a.m., to respond to the call from Sathuvachari Police Station, he went along with his wife, the mother-in-law to the station and found his daughter the victim girl and the accused. The police have informed him that they have secured the victim girl along with the accused in a lodge at Chengi. He has informed to the police that the accused was working as a driver under him and since he had informed that he had fell in love with the victim girl"A", he dismissed the accused from service and that his daughter, the victim girl had complained to him that the accused used to threaten her and on 16.3.2005, the accused had informed her to come out of the house, and afraid of his criminal intimidation, she had budged to his request on 9.3.2005 and left the house at 5.00a.m., as though she is going to attend the tuition and that the accused had took her in his Hero Honda motor cycle bearing Registration No.TN-23-F-3911 to Pondicherry where she has stayed with the accused for nearly six days in a lodge and under the pretext of marrying her, had sexual intercourse with her against her will and that on 15.3.2005 the accused had taken her to Chengi where they stayed in M.G.Lodge and there also had sexual intercourse with her twice and thereafter, they went to a film and on 16.3.2005 at about 5.00.a.m., Sathuvachari police have secured her and brought to Sathuvachari,along with the accused.

4a. P.W.2 is the victim girl "A'. According to her, on 9.3.2005 at about 5.00.a.m., due to criminal intimidation of the accused, she left the house along with the accused in a hero honda motor cycle bearing Registration No.TN-23-F-3911 to Pondicherry and had stayed in the house of one Krishnan, a friend of the accused and under the pretext of marrying her, the accused had sexual intercourse with her (P.W.2) on several occasions. On 15.3.2005 on information that the police and the parents of the victim girl "A" is in search of her and the accused, the accused took her to Cuddalore and from there to

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Chengi in the same bike and stayed in M.G. Lodge at Chengi where also the accused had sexual intercourse with her twice and that she accompanied him to a film and on the following early morning, the police have arrested them. She had identified M.O.4 as the motor cycle in which the accused had taken her to Pondicherry and other places.

4b. P.W.3 is the mother of the victim girl P.W.2 and the wife of P.W.1. At the time of the occurrence, she was working as a Principal of Mother's College, Trichur and on hearing the occurrence, she returned to Vellore on 9.3.2005 and a complaint was preferred on 16.3.2005 with the police. She has also deposed that her mother had narrated the criminal intimidation made to her by the accused on several occasions before the occurrence. She also corroborates the evidence of P.W.1.

4c. P.W.4 is the Mathematics teacher in Government School, Mechari who is the tuition teacher for P.W.2 who would admit that till the date of the occurrence, she was taking tuition to P.W.2 but on 9.3.2005, P.W.2 did not attend the tuition and on the fact was informed to P.W.1, the father of P.W.2.

4d. P.W.5 is conducting STD Booth at M.G.Lodge, Chengi.He speaks that Hero honda motor cycle bearing Registration No.CPZ-TN-23-F-3911 was seized by the police from M.G.lodge on 15.3.2005.

4e. P.W.6 an employee of M.G.Lodge who would admit that on 15.3.2005 M.O.4 Motor cycle was seized by the police under ExP3 mahazar in his presence and that in room No.204, one Pandian had stayed with a girl on 15.3.2005.

4f.P.W.11 is the then Sub Inspector of Police, Sathuvachari Police Station who would depose that on 9.3.2005 at about 10.00 a.m., P.W.1 appeared in the police station and prepared ExP1 complaint which was registered under Sathuvachari Police Station crime NO.268 of 2005 .Ex P12 is the first information report.

4g. P.W.12 is the Investigating Officer in this case would examine the witnesses and recorded their statements who had secured the victim girl P.W.2 and the accused in room No.204 in M.G.Lodge , Chengi on 15.3.2005 and brought to Sathuvachari Police station on 15.3.2005 at about 9.00.a.m., . After altering the charges under Ex P13. He had arrested the accused and recorded his voluntary confession statement and recovered the wearing apparels of the accused, Bond paper, cellphone without simcard under Ex P14 mahazar. ExP15 is the admissible portion of the confession statement. M.O.5 is the bond paper recovered from the accused under mahazar Ex P14.M.O.6 is the cellphone and M.O.7 is the wearing apparels of the accused recovered under Ex P14 mahazar. He had recorded the statement of the

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victim girl P.W.2 and recovered M.O.1 to M.O.3 wearing apparels of the victim girl. He had proceeded to Chengi and recovered M.O.4 motor cycle in the presence of the witnesses. The accused was produced before the Judicial Magistrate for judicial remand. P.W.2 was subjected to medical examination through Court.

4h. P.W.7 is the doctor who had examined the accused and issued Ex P5 certificate certifying that the accused as potent. P.W.8 is the doctor who had examined the victim girl P.W.2 and issued Ex P7 certificate stating that the victim girl was subjected to sexual intercourse more than once and there was no external injuries found on the person of P.W.2 and that her hymen was found ruptured. P.W.9 is the doctor who had examined P.W.2 the victim girl for ascertaining the age of the victim girl. The doctor had taken x-rays and issued Ex P8 age certificate stating that the victim girl may be about 17 years but below 18 years of age. M.O.5 series are the X-rays taken for P.W.2 on 18.3.2005. He has examined the accused and issued Ex P11 age certificate declaring the age of the accused as above 21 years.

4i. P.W.10 is the head constable of Sathuvachari Police Station who had produced the victim girl before the Judicial Magistrate No.2 with the help of a women police constable who took her to the hospital for medical examination and took the accused after remand to the Judicial custody.

4j. P.W.12 after completing the formalities had laid the charge sheet against the accused on 22.9.2005.under Sections 363,366, and 376(1) of IPC.

5. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, he would deny his complicity with the crime. According to the accused, even after he left the job, the victim girl P.W.2 used to contact him over telephone and also gave letters . He has produced Exs D1 and D2 bunch of letters written by P.W.2 to him.

6. The learned trial Judge, after meticulously going through the evidence both oral and documentary has come to a conclusion that the charges levelled against the accused under Sections 363,366 and 376(1) of IPC were not proved beyond any reasonable doubt and accordingly acquitted the accused for an offence under Sections 363, and 366 of IPC. But the learned trial Judge has convicted the accused under Section 376(1) of IPC and sentenced to undergo seven years rigorous imprisonment and slapped a fine of Rs.1000/- with default sentence which necessitated the accused to prefer this appeal before this Court.

7. Now the point for consideration in this appeal is whether the conviction and sentence against the accused under Section 376(1)

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of IPC is sustainable for the reasons stated in the memorandum of appeal?

8.Heard Mr.R.John Sathyan,learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the State and carefully considered their rival submissions.

9. The Point:

Ex P2 birth certificate relating to P.W.2 will go to show that the victim girl"A" was minor aged only 13 at the time of the occurrence. It is in evidence that the accused was working as a driver in the house of P.W.1, the father of the victim girl P.W.2. P.W.2 the victim girl"A" was only under the protection and care of her grand mother since her mother P.W.3 and her father P.W.1 are all employed out of Sathuvachari. The occurrence took place on 9.3.2005 on which date P.W.2 did not return from tuition even after 8.00 a.m., An enquiry with the tuition teacher P.W.4 revealed that on 9.3.2005 P.W.2 did not attend the tuition . It is in evidence that P.W.2 had left the house along with the accused in his Hero Honda motor cycle M.O.4 to Pondicherry and stayed there in a house of one Krishnan, the friend of the accused and thereafter the victim girl left with the accused in the same motor cycle to Cuddalore on 15.3.2005 and from there to Chengi where they stayed in room No.204 at M.G.Lodge.P.W.2 would admit that she had sexual intercourse with the accused on many occasions during their stay at Pondicherry and also at Chengi. The evidence of the doctor P.W.8 who had issued Ex P7 , the hymen of the victim girl P.W.2 was found ruptured and that the victim girl was subjected to sexual intercourse for more than once. There is absolutely no evidence on record to show that the accused had abducted the victim girl under threat. Even according to the evidence of P.W.2, the victim girl , she had travelled along with the accused in M.O.4 motor cycle from Sathuvachari to Pondicherry and from there to Cuddalore and Chengi. It is in evidence of P.W.2 the victim girl that she had also accompanied him to a film while her stay at Chengi in a lodge. The conduct of the victim girl will clearly go to show that she never resisted to accompany the accused either to Pondicherry or to Chengi during the period between 9.3.2005 and 15.3.2005, the date on which she was secured by the Sathuvachari Police. The letters Exs D1 and D2 produced by the accused will go to show that the victim girl is very much in love with the accused. The only embargo is the age of the victim girl at the time of the occurrence. Admittedly, she was minor as per ExP2 age certificate.

10. The learned counsel appearing for the appellant relying on the evidence of the Doctor P.W.9 who had examined both the accused as well as the victim girl in his answers to question put by the Court has stated that there may be two years variations in his assessment of age of the victim girl. Relying on this part of the evidence of

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P.W.9, the learned counsel would contend that at the time of the occurrence, the victim girl should be a major crossing the age of 16. But when Ex P2 birth certificate is available on record, we cannot give much reliance on the evidence of P.W.9, the doctor which is not a conclusive in nature. So I am of the view that the findings of the learned trial Judge that the accused is liable to be convicted under Section 376(1) of IPC cannot be set aside on the basis of the available documentary evidence.

11. When coming to the question of sentence, the learned Additional Public Prosecutor would bring to the notice of this court in a ratio decidenti in State of Chhattisgarh-v- Lakhram(2006)3 Supreme Court Cases (cri) 66) wherein in a case of similar nature in which the prosecutrix is below the age of 16 years, the evidence adduced in that case would reveal that the victim girl voluntarily eloped with the accused and was in his custody for nearly 1 ½ years and allowed the accused to have free sex with her, the Honourable Apex Court thought it fit that the sentence can be modified to that of the period already undergone in the interest of justice. Under such circumstances, I am of the view that the same yardstick can be applied to the present facts of the case while confirming the conviction of the learned trial Judge, the sentence alone can be modified to that of the period already undergone.

12. In fine, the appeal is dismissed confirming the conviction of the learned trial Judge in S.C.No.425 of 2005 under Section 376(1) of IPC but the sentence alone is modified to that of the period already undergone instead of seven years rigorous imprisonmennt and fine of Rs.1000/- . The said fine amount of Rs.1000/- will sustain.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Additional Sessions Judge.District Judge(Trainee) Vellore
2. The Public Prosecutor, High Court, Madras
3. The Superintendent of Central Prison, Vellore
4. The Inspector of Police, Sathuvachari Police Station,Vellore District
5. The Director General of Police, Mylapore, Chennai
6. The District Collector, Vellore

AD (CO)
km/17.8.

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